U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34947283

Date: NOV. 13, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

Since 2011, the Petitioner – a professor of law and economics – has sought classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Since affirming his petition's denial by the Director of the Texas Service Center in 2014, we have dismissed the Petitioner's following 17 motions and combined motions to reopen and reconsider. *See In Re: 31764796* (AAO July 12, 2024).

The matter returns to us again on the Petitioner's combined motions. He contends that our latest opinion errs by not following the recent United States Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024).

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we conclude that his motion to reopen does not meet regulatory requirements and that his motion to reconsider does not demonstrate *Loper*'s applicability to these proceedings. We will therefore dismiss the motions.

I. LAW

A motion to reopen must state new facts, supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). In contrast, a motion to reconsider must establish that our latest decision misapplies law or policy based on the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to our latest decision. 8 C.F.R. § 103.5(a)(1)(i), (ii) (referencing "the prior decision" and "the latest decision"). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. MOTION TO REOPEN

The Petitioner's motion to reopen contains a copy of the *Loper* decision's first page. He argues that this documentary evidence supports "new facts."

Regulations indicate, however, that petitioners must include relevant precedent decisions in motions to reconsider, not in motions to reopen. *See* 8 C.F.R. § 103.5(a)(3) (stating that a motion to reconsider must include "any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy"). Also, the *Loper* decision contains new law, not "new facts" regarding the Petitioner's case. We therefore find that the copy of *Loper*'s first page applies to the Petitioner's motion to reconsider but does not constitute new facts for his motion to reopen.[1]

The Petitioner's motion to reopen omits any other documentary evidence. Contrary to 8 C.F.R. § 103.5(a)(2), the motion does not state new facts, supported by documentary evidence. We must dismiss "[a] motion that does not meet applicable requirements." 8 C.F.R. § 103.5(a)(4). Thus, we will dismiss the motion to reopen.

III. MOTION TO RECONSIDER

A. *Loper Bright Enterprises v. Raimondo*

The Petitioner contends that, in dismissing his latest motions, we misinterpreted the Act. He argues that, under *Loper*, U.S. Citizenship and Immigration Services (USCIS) "is no longer allowed its expansive interpretation of the statute to dismiss EB-1 petitions" and "needs to be held to the strict language of the statute."

Loper overturned *Chevron USA v. Natural Resources Defense Council*, 467 U.S. 837 (1984), ruling that federal courts need not defer to agencies' reasonable interpretations of ambiguous federal laws. Rather, *Loper* provides the judiciary with the sole prerogative to "say what the law is," stating: "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." *Loper*, 144 S. Ct. at 2257, 2273.

The Petitioner misrelies on *Loper*. First, *Loper* affects federal courts, not federal agencies. A federal court reviewing our interpretation of an ambiguous statute must follow *Loper*. But *Loper* does not change how we interpret such laws.

Second, *Loper* involved an agency's interpretation of a statute. *Loper*, 144 S.Ct. at 2254-56. In dismissing the Petitioner's motions and appeals, we interpreted regulations. *See* 8 C.F.R. § 204.5(h)(3)(i-x) (listing ten evidentiary criteria, at least three of which a petitioner seeking to immigrate as a noncitizen with extraordinary ability must meet if they did not receive a major international award). Even if the regulations are ambiguous, our interpretation of them would merit deference under *Auer v. Robbins*, 519 U.S. 452 (1997), which *Loper* did not reverse. *See, e.g., United States v. Boler*, 115 F.4th 316, 322 n.4 (4th Cir. 2024) (declining to apply *Loper* to an issue involving an agency's interpretation of its own regulations).

For the foregoing reasons, *Loper* did not affect our latest decision. The Petitioner's argument therefore does not persuade us.

[1] As discussed below, even if we considered the decision page as part of the Petitioner's motion to reopen, *Loper* would not demonstrate the petition's eligibility for reopening.

B. Factual Errors

The Petitioner also contends that our latest decision contains factual errors. He states that we misdescribed him as a "former professor." He states that he is not only a current professor but also a judge, actuary, accountant, and author. He also contends that our decision errs in stating "his completion of a handful of introductory courses in a civil engineering curriculum." He maintains that he has five years of university studies in that field. He argues that we "created" the misinformation "to diminish [his] career."

Assuming that we erred in our description of the Petitioner and his civil engineering studies, the record shows that these errors did not affect our latest decision's outcome. Our description of him as a former professor had no bearing on our dismissal of his motions. Also, our latest decision did not seek to emphasize the extent of his civil engineering studies. Rather, our point was that he did not demonstrate how his civil engineering studies "support his eligibility for this classification as a professor of law and economics."

In sum, our descriptions of the Petitioner and his civil engineering studies were immaterial to our latest decision's analysis. *See Animal Legal Def. Fund v. U.S. Dep't of Agric.*, 789 F.3d 1206, 1224 n.13 (11th Cir. 2015) ("An agency decision is harmless when a mistake of the administrative body is one that clearly had no bearing on the procedure used or the substance of the decision reached.") [2]; *see generally Matter of O-R-E-*, 28 I&N Dec. 330, 350 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors). The errors therefore do not merit the petition's reconsideration.

C. The Petitioner's Requests

The Petitioner's motion to reconsider also contains requests. First, he asks us to tell the Director to issue him an employment authorization document (EAD). *See, e.g.,* 8 C.F.R. § 274a.12(c)(9) (allowing noncitizens who have filed applications for adjustment of status to work in the United States).

But we lack authority over applications for, or the issuance of, EADs. *See* Dep't of Homeland Sec. Delegation No. 0150.1 (effective Mar. 1, 2003) (delegating appellate jurisdiction to the Administrative Appeals Office over the matters listed in former 8 C.F.R. § 103.1(f)(3)(iii)). We are therefore unable to fulfill this request.

The Petitioner also asks us to reopen and reconsider his petition on our own motion. Under 8 C.F.R. § 103.5(a)(5), we can unilaterally decide to reopen or reconsider applications and petitions. *See* 1 *USCIS Policy Manual* F., retired *Adjudicator's Field Manual*, Chapter 10.17(c), www.uscis.gov/policymanual (stating that an officer may reopen a petition on USCIS motion if "a petition should not have been approved but there are no specifically applicable grounds for revocation in the regulations, or . . . a petition should not have been denied").

[2] The Petitioner resides in the eleventh federal judicial circuit. Precedent decisions of the U.S. Court of Appeals for the Eleventh Circuit therefore bind us in this matter. *See Matter of Rivens*, 25 I&N Dec. 623, 629 (BIA 2011).

But we decline to reopen or reconsider the petition on our own motion. First, the Petitioner's motions already ask us to reopen or reconsider the filing. Second, his arguments do not persuade us that we erred in dismissing his latest motions.

The Petitioner further requests our de novo review of the entire record. He claims that he presented "more evidence than needed" to satisfy at least three of the initial evidentiary requirements.

As we stated in our prior decision, however, the Petitioner has not identified specific errors warranting the petition's reconsideration. *See, e.g., Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) ("[A] motion to reconsider is not a process by which a party may submit, in essence, the same brief presented . . . and seek reconsideration by generally alleging error in the prior . . . decision"). We decline to re-adjudicate the petition.

IV. CONCLUSION

The motion to reopen does not meet regulatory requirements. The motion to reconsider does not establish that our latest decision misapplies law or policy.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.